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**Finance Committee**

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**HB 2962**

**Brief Description:** Broadening the eligibility requirements and extending the expiration date for the data center tax incentive.

**Sponsors:** Representatives Chapman and Ybarra.

**Brief Summary of Bill**

- Extends until July 1, 2035, the date until which exemption certificates for the data center tax preference (RCW 82.08.986 and RCW 82.12.986) may be issued.
- Extends until July 1, 2047, the expiration of exemptions provided under the data center tax preference.
- Removes limitations on the maximum number of allowable exemptions under the data center tax preference.
- Modifies the data center tax preference in several additional ways.

**Hearing Date:** 3/2/20

**Staff:** Nick Tucker (786-7383).

**Background:**

Retail Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Data Centers Tax Preference.

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The owner of an eligible data center with a combined square footage of at least 100,000 square feet and the tenants of an eligible data center located in a rural county may be eligible for a sales and use tax exemption. A rural county is defined as a county with a population density of less than 100 persons per square mile or counties smaller than 225,000 square miles as of April 1, 2018. Currently, there 30 counties that meet the rural county definition.

To qualify, the data center must have a building permit to construct, renovate, or expand the data center issued between:

- April 1, 2010 and June 30, 2011;
- April 1, 2012 and June 30, 2015; or
- July 1, 2015 and June 30, 2025.

Only 12 data centers that begin construction on or after July 1, 2015, but before July 1, 2025, can be approved for the exemption. Of the 12, only eight centers can be approved that begin construction on or after July 1, 2015, but before July 1, 2019.

The sales and use tax exemption is available for purchases of eligible server equipment and labor and services to install server equipment in an eligible data center. In addition, a sales and use tax exemption is allowed for purchases of eligible power infrastructure and the labor and services to construct, install, repair, alter, or improve eligible power infrastructure.

A "computer data center" means a facility with one or more buildings, which may be comprised of multiple businesses, constructed or refurbished specifically, and used primarily, to house working servers, where the facility has:

- uninterruptible power supplies, generator backup power, or both;
- sophisticated fire suppression and prevention systems; and
- enhanced physical security.

The exemption is available on a first-in-time basis, based on the date the application for the sales and use tax exemption is received by the Department of Revenue (DOR). Exemption certificates expire two years after the date of issuance, unless construction of the data center has begun.

An eligible taxpayer must file an annual tax performance report by May 31 of the year following the year the applicant becomes eligible to claim the sales and use tax exemption.

There are hiring requirements for recipients of the sales and use tax exemption. Within six years of the issue date on the sales and use tax exemption certificate, the qualifying data center must establish that net employment has increased by a minimum of 35 family-wage employment positions or three family-wage employment positions for each 20,000 square feet of space or less that is newly dedicated to housing working servers at the eligible computer data center.

#### Tax Preference Performance Statement.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative

Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

### **Summary of Bill:**

#### Data Center Tax Preference.

The date until which exemption certificates for eligible server equipment and power infrastructure may be issued is extended until July 1, 2035. All exemptions provided under the section are set to expire July 1, 2047.

The 12 data center cap applies only to exemptions for which construction commenced after July 1, 2015, but before the effective date of the bill.

The exemption is effective from the date an application is received by the DOR and no tax refunds are authorized for purchases made prior to an application.

#### *Employment Requirements.*

For the purpose of the owner of an eligible computer data center calculating their net increase in employment positions, the net increase in employment positions employed by qualifying tenants may only be included for those increases occurring after the date of issuance of an exemption certificate.

For the purpose of a qualifying tenant calculating their net increase in employment positions, the net increase in employment positions employed by the owner of an eligible data center or an independent contractor may be included, prorated as a percentage of total space within the data center occupied by the tenant.

For exemptions provided after the effective date of the bill, a family wage employment position is any new permanent employment position requiring 40 hours of weekly work on a full-time basis and received a wage equivalent to at least 125 percent of the per capita county income. If employment requirements are not met, the exemption certificate is cancelled.

#### *Miscellaneous Provisions.*

A certificate holder may transfer or assign the exemption certificate if certain conditions are met and the assignment or transfer is made to an entity that:

- controls, is controlled by, or under common control with, the certificate holder;
- acquires all or a substantial portion of the stock or assets of the certificate holder; or
- is the resulting entity of a merger or consolidation with the certificate holder.

A taxpayer is not deemed ineligible for the preference if that taxpayer, or an associate thereof, benefits from the deferral program provided in chapter 82.60 RCW, which expires July 1, 2020.

"Certificate of occupancy," "refurbished," and "refurbishment" are all defined.

The square footage requirement for an eligible computer data center may include server space that has previously been dedicated to housing working servers.

Replacement server equipment is limited to equipment that replaces existing server equipment that:

- was ineligible for the exemption prior to the effective date of the bill;
- has been refurbished; and
- to which a valid exemption certificate applies.

Tax Preference Performance Statement.

The public policy objective of the bill is to maintain and grow the existing data center sector in Washington state, and encourage development of new data center facilities and refurbishment of existing data centers, thereby increasing the competitiveness of Washington's tax structure, which will increase or maintain construction and trade job growth in rural areas, and increase local tax revenue streams.

The JLARC is directed to review, taking into account changing economic conditions, if the tax preference is generating:

- capital investment in new computer data centers, refurbished data centers, and existing data centers (e.g. replacement server equipment);
- state and local tax collections from data center investment and operations; and
- construction and trade jobs in the state.

**Appropriation:** None.

**Fiscal Note:** Requested on February 28, 2020.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.